

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRONTIER FISHING CORP.)	CIVIL ACTION NO.04-11171-DPW
)	
Plaintiff,)	<u>PLAINTIFF'S MOTION</u>
v.)	<u>FOR ORDER OF</u>
DONALD EVANS, Secretary of the)	<u>CONTEMPT</u>
UNITED STATES DEPARTMENT OF)	
COMMERCE; AND CONRAD C.)	
LAUTENBACHER JR. UNDER SECRETARY)	
FOR OCEANS AND)	
ATMOSPHERE/ADMINISTRATOR AND)	
DEPUTY UNDER SECRETARY)	
)	
Defendants.		

Now comes the Plaintiff, Frontier Fishing Corp. and moves for an order of contempt against the defendants. As grounds there fore, Plaintiff states as follows:

1. This action was filed in 2004 to set aside a decision of an Administrative Law Judge finding a violation of regulations promulgated by the National Oceanographic and Atmospheric Administration. In his decision, the ALJ both upheld the Agency's determination of a violation and increased the fine to the respondent from \$10,000 to \$35,000.¹

2. In this action, this Court ordered the decision of the Agency be set aside and that the matter be remanded for *de novo* review.

3. Based on NOAA collection actions in another case where NOAA attempted to assert liens on assets to secure a fine, Plaintiff paid the fine to the Agency at the same time the appeal was timely filed to avoid liens being placed on its assets. See check, Exhibit A.

¹ The facts set forth below are attested to by counsel, as evidenced by the signature on this pleading.

³ Plaintiff has recently been notified that the action has now been referred to the same ALJ who initially tried the case. In light of the ALJ's rejection of basic mathematics, it is questionable whether this will, in fact, result in a review *de novo*.

4. Following this Court's Decision and Order, Plaintiff requested that the Agency refund the payment. The United States Attorney ultimately referred Plaintiff's counsel to NOAA General Counsel, Alexa Cole. In response to a written request to Atty. Cole by Attorney Ouellette, see Exhibit B, Atty. Cole advised the undersigned that the Agency takes the position that the final determination of the Agency has not been vacated. Attorney Ouellette read the language of this Court's decision to Attorney Cole, who has offered no further explanation for the Agency's refusal to repay the funds.³

Plaintiff contends that unless the Agency is contemptuously refusing to comply with this Court's Decision and Order by failing to return the funds.

Where fore, Plaintiff, Frontier Fishing Corp. prays this Honorable Court:

1. Issue an order of Contempt against the Defendants.
2. Issue an order compelling return of the \$35,000 with interest.
3. Grant Plaintiff such further relief as this Court deems just and proper.

Respectfully submitted this 16th day of August, 2006

FRONTIER FISHING CORP
By its attorneys
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